

REMARKS

§ 112 Rejections

The Examiner has rejected claim 6 for lack of antecedent basis of the phrase “said means for attaching.” Applicant has amended claim 6 to claim dependency on claim 5. Applicant believes this amendment traverses the Examiner’s § 112 rejection of claim 6.

§ 102 /Rejections

The Examiner has rejected claims 1, 3, 5-7, and 9 as anticipated by Kristen. Claims 1, 3, and 7 have been cancelled. Claim 5 has been amended, and claims 6 , 7, 8 and 9 have been amended to depend from claim 5.

Applicant respectfully submits that independent claim 5 is patentably distinguishable over Kristen because Kristen does not disclose a means for attaching a vertical scaffold member, positioned near the interior end of the upper tube. Such means allows for attachment of a vertical scaffold member on the interior end of the upper tube, and therefore inside the space defined by the scaffold frame. This feature is lacking in Kristen.

MPEP 706.02 states that “for anticipation under 35 U.S.C. 102, the reference must teach *every aspect* of the claimed invention either explicitly or impliedly.” It should be apparent to the Examiner that the elements claimed in Applicant's invention are novel in comparison to the Kristen invention. It should be readily apparent to the Examiner that Kristen does not teach *every aspect* of Applicant's invention.

First, Applicant respectfully submits that Kristen does not teach or suggest placing a short vertical scaffold join at the interior end of an upper tube. Kristen’s invention consists of a

collapsible scaffold frame. The upper tube and lower tube assembly found in Kristen must be attached to vertical scaffold members as shown in Kristen's Figure 2 so that when collapsed, the upper and lower tube assemblies remain in the same vertical plane as the vertical scaffold members. Accordingly, the upper and lower tube assemblies disclosed by Kristen necessarily comprise the walls of that invention's scaffold by attaching to vertical scaffold members in the same manner as horizontal scaffold members. In contrast, Applicant's invention connects to horizontal scaffold members from within the interior of the scaffold frame. Without a plurality of horizontal scaffold members to attach to, Applicant's invention would not be able to bridge the interior of the scaffold. This is a very different result than the result produced from Kristen's upper and lower tube assembly, which may act as the horizontal scaffold members of that invention.

Second, Kristen does not teach or suggest placing a vertical scaffold member on the upper and lower tube assembly as disclosed by Applicant. As mentioned above, MPEP 706.02 requires the reference teach *every aspect* of the claimed invention. In support of the 102(b) rejection, the Examiner states that Kristen shows "an upper tube 27, a lower tube assembly 23, attachments 31, 33, a stub 42, and a projecting member at 28 for means 30." Claim 5, as amended, includes a means for attaching a vertical member at the interior end of the upper tube. Kristen provides no means for such attachment. The attachments disclosed by Kristen provide for attachment of the exterior ends of the upper and lower tubes respectively to the scaffold frame. There is no disclosure of an attachment means to the interior end of the upper tube assembly. In view of this, Applicant respectfully requests the Examiner withdraw the rejection of claim 5 and all claims depending therefrom.

To disclose the present invention, Kristen would first have to teach an upper tube and lower tube assembly connected to horizontal scaffold members and would second have to disclose a means for attaching a vertical scaffold member at the interior end of the upper tube and within the interior of the scaffold. Kristen does not disclose *any* of the above listed elements, much less all of them as required by MPEP 706.02. As result, Applicant respectfully suggests that Kristen does not anticipate claim 5 and therefore, the Examiner should withdraw the 102(b) rejection for claim 5 and all claims depending therefrom.

The Examiner has rejected claim 10 as being anticipated by Williams. Applicant respectfully submits that claim 10, as amended, is patentably distinguishable over Williams because Williams does not disclose a safety rail system for the scaffold access system.

As noted above, MPEP 706.02 states that “for anticipation under 35 U.S.C. 102, the reference must teach *every aspect* of the claimed invention either explicitly or impliedly.” Unless Williams discloses *every aspect* of elements of claim 10, as amended, the Examiner must withdraw the 35 U.S.C. 102(b) rejection. It should be readily apparent to the Examiner that Williams does not teach *every aspect* of Applicant's invention.

In support of the 102(b) rejection, the Examiner states that Williams clearly anticipates the Applicant's invention, without further explanation. Claim 10 has been amended to clarify the invention and to provide for a safety rail system as disclosed by Applicant in the initial application. Applicant believes that this amendment successfully traverses the 102(b) rejection based on Williams and requests that the Examiner withdraw the rejection from claim 10 and all claims depending therefrom.

Appl. No. 10/799,074
Amdt. dated September 12, 2005
Reply to Office Action of September 28, 2005

§ 103 Rejections

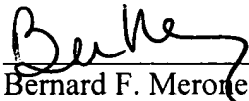
The Examiner rejected claims 2 and 4 as being unpatentable over Kristen in view of either Heun or Walker and Layher, respectively. Because claims 2 and 4 are cancelled, these rejections are rendered moot.

CONCLUSIONS

It is believed that the application is now in a condition for allowance. It is therefore respectfully requested that the Examiner reconsider the rejections made in light of the amendments and remarks presented herein, and that the remaining pending claims be allowed. The undersigned asks that the Examiner contact him at (225) 248-2104 if he has any questions so that early allowance might be reached.

Respectfully submitted,

DATE: September 12, 2005


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